IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 443 OF 2006
IN
WRIT PETITION NO. 746 OF 2006

Dr. Ms. Uma Singh .. Appellant.

V/s.

1. The Burhani Education Society .. Respondents.
& others.

Mr.C.R.Sadashivan with Mr.N.M.Ganguli for the Appellant

Mr.B.V.Phadnis for Respondent No.3.

Ms.I.K.Calcuttawala, Assistant Government Pleader for Respondent No.4.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 18TH AUGUST, 2006.

P.C.:

. The Appellant suffered a departmental enquiry into her conduct.

2. The following charges of misconduct were levelled against her :-

(i) Misconduct and dereliction of duty on account of your refusing to engage lectures in the first term of the current academic year 1996-97 in contravention of the Code of Conduct

enumerated in Statute 439-B(a) and (d). This amounts to an act of misconduct under Statute 439-D(a) Explanations (a)(i) and (ii) and willful and persistent negligence of duty under Statute 439-D(c) Explanation (c)(i)(ii) & (iii).

(ii) Misconduct and dereliction of duty on account of your refusing to perform examination duties in the second half of the calendar year 1996 in contravention of the Code of Conduct enumerated in Statute 439-B(a) and (d). This amounts to an act of misconduct under Statute 439-D (a) Explanations (a)(i) and (ii) and wilful and persistent negligence of duty under Statute 439-D(c) Explanation (c)(i)(ii) & (iii).

(iii) Misconduct and moral turpitude on account of your insubordination demonstrated by willful disobedience of administrative instructions issued to you. Despite repeatedly being asked to make an entry of the time of arrival and to put your signature in the attendance register your have refused to do. Further you were repeatedly told not to make any remark or entry other than the time of arrival in the attendance muster, but you continued to make entries and

remarks not only against your own name but also against the names of other employees. These actions are in contravention of the Code of Conduct enumerated in Statute 439-B(d). This amounts to an act of misconduct under Statute 439-D(a) Explanation (a) (i) and (ii) and moral turpitude under Statute 439-D(b) Explanation (b).

(iv) Misconduct and moral turpitude on account of your insubordination demonstrated by your refusal to accept communications addressed by the principal to you, whether handed over personally or sent to you by registered post. This willful disobedience and insubordination amounts to an act in contravention of the Code of Conduct enumerated in Statute 439-B(d) amounting to misconduct under the provisions of Statute 439-D(a) Explanation (a)(ii) and moral turpitude under Statute 439-D(b) Explanation (b).

(v) Misconduct and moral turpitude deliberate spreading false and derogatory information about the institution, the management and the Principal in the press, with the Government and the Police. This amounts to inciting

students/teachers against the Administration/ Governing Body and is in contravention of the Code of Conduct as enumerated in Statute 439-B(b) and /or Statute 439-B(c) and /or Statute 439-B(b) & (c) which in turn amount to misconduct under the provisions of Statute 439-D(a) Explanation (a)(ii) and moral turpitude under Statute 439-D(b) explanation (b).

3. The appellant was also served with the statement of allegations.

4. The enquiry into the conduct of the appellant was concluded by the enquiry officer and the report and findings by the enquiry officer were forwarded to the management - respondent No.1. Upon receipt of the enquiry report and the findings, the disciplinary authority served a show cause notice upon the appellant on 16th September, 2003, informing her that charges Nos.1,2,3 and 4 have been held proved against her by the enquiry officer and based on that findings, the management proposed to dismiss her from service. The appellant was called upon to show cause why proposed punishment be not imposed upon her.

5. The appellant responded to the show cause notice by sending reply on 7th of October, 2003. It is pertinent to note that in response to the show cause notice, the appellant set up broadly two pleas, viz., one - that the enquiry officer who was initially appointed did not proceed with the enquiry after 29.08.2000 and left the enquiry inconclusive and after a lapse of 32 months, in the month of March, 2003, the new enquiry officer was appointed, who without examining the witnesses, hurriedly held her guilty of charges Nos. 1 to 4; and, secondly - that the management is biased against her and is motivated by a fierce desire to victimize her. Casually, it was also mentioned that the management has been indiscriminating her in as much as in respect of Prof. I.U.Khan, though an identical chargesheet was served, no enquiry was conducted in his case.

6. The management was not satisfied with the appellant’s response and by the resolution passed on 15th October, 2003, it was decided that the appellant be dismissed from service. It appears that thereafter, the appellant made a representation to the Maharashtra Minority Commission and then filed an Appeal before the College Tribunal under section 59(1) Maharashtra Universities Act and challenged the order of dismissal.

7. The College Tribunal held that the first charge of misconduct and dereliction of duty cannot be held to have been proved by the management. The College Tribunal held that the second and fourth charge of misconduct are duly proved. As against the third charge, the College Tribunal held that the said charge was partly proved. The College Tribunal in its order dated 31st March, 2005, allowed the Appeal partly, set aside the order of dismissal dated 15.10.2003 and passed and substituted the said order with penalty of compulsory retirement, effective from 15th October, 2003. The Tribunal directed the management to pay all the back wages due and payable to the appellant with benefit of continuing service until the date of compulsory retirement.

8. The appellant challenged the order of the College Tribunal by filing a writ petition, which came to be dismissed by the learned single Judge on 27th March, 2006.

9. The counsel for the appellant raised twofold submission before us. The first submission before us is that Mr.I.U.Khan, who was charged with similar charges, was not given the penalty of dismissal as was given to

the appellant by the management. Secondly, he submitted that the appellant has been victimized by passing the order of dismissal.

10. None of the submissions appeals us.

11. It is true that one Mr. I.U.Khan was charged with misconduct by the management on 4th December, 1996 and an enquiry officer was appointed to hold the departmental enquiry to look into his conduct. However, it will not be proper to compare the charges levelled against the petitioner-appellant and Mr. I.U.Khan, as both were charged with distinct charges; separate enquiries were held against them and the evidence produced in both the enquiries was not exactly identical. Plea of discrimination in this fact situation is misplaced and misconceived. The appellant has been charged of misconduct, interalia, that she refused to perform examination duties in the second half of the calendar year 1996. Her conduct in refusing to perform examination duties has been found to be in contravention of Code of Conduct enumerated under the Statute 439-B(a) and (d). The enquiry officer, after taking into consideration the entire evidence on record, found that the said charge is proved. In Appeal, the College Tribunal found no justifiable reason to take a

different view.

12. Similarly charge no.4 has been held to be proved against the delinquent by the enquiry officer as well as the College Tribunal. This charge broadly relates to the refusal to accept communications addressed by the Principal to the appellant and thereby, wilful disobedience and insubordination.

13. In view of the fact that the charges Nos. 2 and 4 have been held proved and charge No.3 has been partly proved, the College Tribunal took a lenient view and set aside the order of dismissal passed by the management and substituted it with penalty of compulsory retirement. For the charges that have been proved against the appellant, the penalty of compulsory retirement cannot be said to be disproportionate in any manner whatsoever. In so far as, the plea of victimization is concerned, save and except bald allegation, there is no material substantiating the said allegation.

14. The counsel for the appellant also raised a grievance that there was a gap of 32 months between completion of recording of evidence and re-start of the enquiry by the second enquiry officer and, thereby, the

enquiry report is vitiated. It is true that Mrs. Ayesha F.Damania, who was appointed as enquiry officer, started the enquiry on 05.03.1997. She completed the recording of evidence in the month of August, 2000. However, for personal reasons she did not proceed further with the enquiry and the new enquiry officer came to be appointed in the month of March, 2003. For this gap of 32 months, malice or motive to the management cannot be attributed. The first enquiry officer left the work of enquiry on account of her personal reasons. Obviously, the inquiry that was instituted against the appellant had to be taken to its logical conclusion and, accordingly, second enquiry officer was appointed. In our considered view delay of 32 months in appointment of second enquiry officer cannot be held to vitiate the enquiry against the appellant or the report submitted by the enquiry officer.

15. Appeal is without any merit. It is dismissed in limine.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)

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